

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

INVENTOR(S): Gutierrez, et al
APPL. NUMBER: 09/852,831
FILED: 5/10/2001
TITLE: Reserve Price Auctioning

GROUP ART UNIT: 3627
EXAMINER: James A. Kramer

Docket Number: AUS920010325US1

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class mail in an envelope addressed to "Honorable Commissioner For Patents, PO Box 1450, Alexandria, Virginia 22313-1450", on the date set forth below:

Signed:

Name: Robert V. Wilder
Date: October 26, 2004

Honorable Commissioner For Patents
PO Box 1450
Alexandria, Virginia 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Enclosed herewith is an Appeal Brief, in triplicate, for the above-identified application submitted in response to the Notice of Non-Compliance With 37 CFR 1.192(c) which was mailed 10/19/2004. The "Grouping" paragraph has been modified to indicate that all of claims 1-26 "stand or fall together" as requested by the referenced Notice.

Respectfully submitted,

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3627

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

3
4 Attorney Docket No. AUS920010325US1

5
6 IN RE APPLICATION OF: S
7 S
8 Gutierrez, et al S Examiner: James A. Kramer
9 S
10 Serial Number: 09/852,831 S Art Unit: 3627
11 S
12 Filed: May 10, 2001 S
13 S
14 For: RESERVE PRICE AUCTIONING S
15 S
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19 **APPEAL BRIEF**
20
21

22 Commissioner for Patents
23 P.O. Box 1450
24 Alexandria, Virginia 22313-1450
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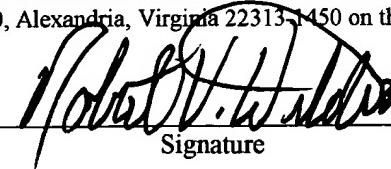
27 Sir:

28 This Brief is submitted in triplicate in support of the Appeal in
29 the above-identified application.
30

32 **CERTIFICATE OF MAILING**
33 37 CFR 1.8(a)

34 I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an
35 envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date below:
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37 26 October 2004
Date


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38
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41

42 Serial Number 09/852,831
43 Attorney Docket No. AUS920010325US1



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63	I. With regard to the rejection of claims 1-26 under 35 USC	
64	103(a) over Alaia et al, it is respectfully submitted that there	
65	is no basis, disclosure, teaching or even suggestion in Alaia	
66	sufficient to render the present invention (as presented in	
67	currently pending claims 1-26) obvious.	6
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74 **REAL PARTY IN INTEREST**

75
76 The present application is assigned to International Business
77 Machines Corporation, the real party in interest.
78
79

80 **RELATED APPEALS AND INTERFERENCES**

81
82 No related appeal is presently pending.
83
84

85 **STATUS OF THE CLAIMS**

86
87 Claims 1-26 are pending and stand finally rejected by the
88 Examiner as noted in the Final Office Action mailed March 5,
89 2004.

90
91
92 **STATUS OF AMENDMENTS**
93
94 Prior to the Final Office Action (mailed 3/5/04), there was only
95 one Office Action mailed 9/24/03 and one Amendment mailed
96 12/22/03. The Second and Final Office Action rejected all 26
97 claims under 35 USC 103 over a single reference. The last entered
98 amendment was submitted 12/22/03 which amended the claims to the
99 text shown in the Appendix.

100
101

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SUMMARY OF THE INVENTION

102 **SUMMARY OF THE INVENTION**

103

104 The present application discloses a method and implementing
105 system in which items are offered for auction sale at a network
106 site to bidders who access the auction site (e.g., *inter alia*,
107 page 4, lines 1-5). A seller is enabled to designate a reserve
108 price (e.g., *inter alia*, page 5, line 30 et seq.) as well as a
109 number of automatic auction extensions (e.g., *inter alia*, page 6,
110 line 4 et seq.) to an initial auction period. If the designated
111 reserve price for an item is not met during the initial auction
112 period (e.g., *inter alia*, Fig. 4, #411), and the seller has
113 authorized a designated number of auction extensions (e.g., *inter
114 alia*, Fig. 4, #417, 419), the auction is automatically continued
115 beyond the initial auction period and is automatically extended
116 for the designated number of extensions (e.g., *inter alia*, page
117 7, line 7 et seq.) until either a bid for the reserve price is
118 received or the number of authorized extensions has transpired
119 (e.g., *inter alia*, Fig. 4, #419, 415).

120

121 The above methodology is set forth in pending claim 1, which
122 recites:

123

124 "1. A method for conducting an auction at an auction server for an item offered for sale, said
125 method comprising:

126

127 enabling a seller to designate a predetermined reserve price for said item;

128

129 enabling bidders to be connected to said auction server through an interconnection network;

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130
131 receiving price bids from said bidders for said item during an auction period;
132
133 determining that none of said price bids is equal to or greater than said predetermined reserve
134 price during said auction period;
135
136 determining that an extension of said auction period was authorized by a seller of said item if none
137 of said price bids was equal to or greater than said predetermined reserve price; and
138
139 automatically extending said auction period if said extension of said auction period was
140 authorized."

ISSUES

144
145 1. Is the Examiner's rejection of claims 1-26 under 35 USC 103(a)
146 as being unpatentable over Alaia et al, U. S. Patent 6,230,147 B1
147 (hereinafter referred to as "Alaia"), well founded?

GROUPING OF THE CLAIMS

152 For purposes of this Appeal, claims 1-26 stand or fall together.

ARGUMENT

156
157 I. With regard to the rejection of claims 1-26 under 35 USC
158 103(a) over Alajia et al., it is respectfully submitted that there

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159 is no basis, disclosure, teaching or even suggestion in Alaia
160 sufficient to render the present invention (as presented in
161 currently pending claims 1-26) obvious. It is further submitted
162 that Alaia not only does not teach or suggest the total
163 combination of elements and relationships as presently set forth
164 in the appended claims, but in fact Alaia actually teaches away
165 from the present invention as currently defined by the claims
166 presented in the Appendix.

167
168 The Alaia reference describes a "buyer" offered auction not a
169 "seller" offered auction. The dynamics of each type of auction
170 are totally different with different operational characteristics,
171 goals and results. The claims of the present application are all
172 directed to a seller auction as specifically stated in the
173 claims.

174
175 Alaia specifically states in the Abstract that "the bidding
176 status of a lot can be set to a 'pending' status after the
177 nominal closing time for submission of bids to allow bidders to
178 alert the auction coordinator of technical problems in submission
179 of bids". It is significant to note that **there is necessarily a**
180 **break in the Alaia buyer-auction process. In the present**
181 **invention, if a predetermined reserve price is not met then an**
182 **extension is implemented automatically.** A break in the auction
183 bidding, as suggested by Alaia, would not solve the problem
184 addressed by the applicant of enabling an **uninterrupted** continued
185 **bidding for an item (not an offer to sell a lot as required in**
186 **the Alaia buyer's auction) in order to obtain a bid equal to or**
187 **greater than a predetermined reserve price bid (not in order to**
188 **synchronize separate and different auction times among several**

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189 **auctions as is taught by Alaia).** With the present invention, bids
190 are evaluated compared to the predetermined reserve price number
191 whereas in Alaia, bids are evaluated against a current best bid -
192 **there is no mention or even suggestion of anything that might**
193 **even arguably correspond to a predetermined reserve price as that**
194 **term is disclosed and claimed in the present application.** This
195 distinction is critical because it shows that the two auction
196 systems are quite different and the operational aspects of one
197 system (a buyer system) cannot be substituted for those of
198 another system (a seller system) without a total breakdown of the
199 flow of the seller auction system. That being the case, it is
200 submitted that pieces and parts of a buyer auction system cannot
201 be substituted for, or suggestive of, other pieces and parts of a
202 seller-oriented auction since such a substitution would render
203 the seller auction system inoperable for its intended purpose. A
204 direct substitution of the Alaia bidding extension process would,
205 by definition, depend only on the "current" or "then low" bidding
206 compared to other received bids and would have absolutely no use
207 for a predetermined reserve price designation for initiating an
208 extended bid period, and thus cannot be used to render the
209 claimed extension processing (which includes a "predetermined
210 reserve price" designator) obvious. There is no teaching or
211 suggestion in Alaia that even contemplates the currently claimed
212 combination of elements and relationships including:

213
214 **"enabling a seller to designate a predetermined reserve price for said item; . . .**
215
216 **determining that none of said price bids is equal to or greater than said predetermined**
217 **reserve price during said auction period;**
218

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219 **determining that an extension of said auction period was authorized by a seller of said item**
220 **if none of said price bids was equal to or greater than said predetermined reserve price;**
221 **and**
222
223 **automatically extending said auction period if said extension of said auction period was**
224 **authorized."**
225

226 It is also significant to note that a substitution of the Alaia
227 methodology in the applicant's system would render applicant's
228 system inoperable for its stated intended purpose since there
229 **would necessarily be a break in the bidding process, a result**
230 **intentionally avoided by the applicant's methodology.** Further, a
231 substitution of the applicant's methodology in the Alaia system
232 would render the Alaia system inoperable for its stated intended
233 purpose since a break to a "pending" status between conflicting
234 auction closing times could not be achieved. In view of this direct
235 conflict, it is submitted that there can not possibly be a
236 suggestion in Alaia that could render the present invention
237 obvious. **Since a substitution of the Alaia methodology into the**
238 **applicant's system would render the applicant's system inoperable**
239 **for its intended purpose, it is a necessary corollary that Alaia**
240 **cannot be said to render the present invention obvious.**

241
242 It is therefore submitted that claims 1-26 are allowable under 35
243 USC 103(a) over Alaia et al.
244

245
246

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247
248

CONCLUSION

249 For the reasons stated above, applicant urges the Board to
250 consider that Alaia et al does not even suggest a method or
251 system for conducting an auction at an auction server for an item
252 offered for sale, in which the method comprises enabling a seller
253 to designate a predetermined reserve price for an item, enabling
254 bidders to be connected to said auction server through an
255 interconnection network, receiving price bids from said bidders
256 for said item during an auction period, determining that none of
257 the price bids is equal to or greater than the predetermined
258 reserve price during the auction period, determining that an
259 extension of the auction period was authorized by a seller of the
260 item if none of the price bids was equal to or greater than the
261 predetermined reserve price, and automatically extending the
262 auction period if the extension of the auction period was
263 authorized, as those functions and relationships are set forth in
264 the pending claims 1-26.

265
266 Consequently, applicant urges that the rejection of claims 1-26
267 under 35 USC 103(a) as being unpatentable over Alaia et al, is
268 not well-founded and should be reversed.

269
270 Please charge IBM Corporation Deposit Account No. 09-0447 in the
271 amount of \$330.00 for submission of a Brief in Support of Appeal.
272 No additional fee or extension of time is believed to be
273 required; however, in the event an additional fee or extension of
274 time is required, please charge the fee, as well as any other fee
275 necessary to further the prosecution of this application, to the

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276 above-identified deposit account.

277 Respectfully submitted,

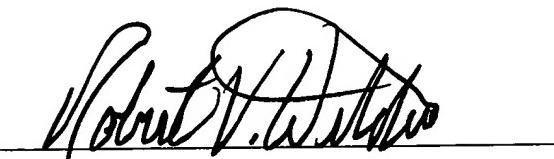
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APPENDIX

APPENDIX

1. A method for conducting an auction at an auction server for an item offered for sale, said method comprising:

enabling a seller to designate a predetermined reserve price for said item;

enabling bidders to be connected to said auction server through an interconnection network;

receiving price bids from said bidders for said item during an auction period;

determining that none of said price bids is equal to or greater than said predetermined reserve price during said auction period;

determining that an extension of said auction period was authorized by a seller of said item if none of said price bids was equal to or greater than said predetermined reserve price;

and

automatically extending said auction period if said extension of said auction period was authorized.

2. The method as set forth in claim 1 and further including enabling said seller to input said predetermined reserve price through an input screen at a seller terminal.

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319
320 3. The method as set forth in claim 2 wherein said
321 interconnection network is an Internet interconnection network.
322
323 4. The method as set forth in claim 1 and further including:
324
325 enabling said seller to input said predetermined reserve price
326 prior to said auction.
327
328 5. The method as set forth in claim 4 wherein said predetermined
329 reserve price is input by said seller using a computer device.
330
331 6. The method as set forth in claim 4 wherein said predetermined
332 reserve price is input by said seller using a wireless device.
333
334 7. The method as set forth in claim 4 wherein at least one of
335 said price bids is input by a bidder using a computer device.
336
337 8. The method as set forth in claim 4 wherein at least one of
338 said price bids is input by a bidder using a portable device.
339
340 9. The method as set forth in claim 4 wherein at least one of
341 said price bids is input by a bidder using a wireless device.
342
343 10. The method as set forth in claim 4 wherein at least one of
344 said price bids is input by a bidder using a wireless phone
345 device.
346

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347 11. The method as set forth in claim 1 and further including:
348
349 enabling said seller to designate a duration for said extension.
350
351 12. The method as set forth in claim 11 and further including:
352
353 enabling said seller to designate a number of extensions to be
354 automatically executed so long as none of said price bids equaled
355 or exceeded said predetermined reserve price.
356
357 13. The method as set forth in claim 1 and further including
358 notifying said bidders of said extension.
359
360 14. A storage medium including machine readable coded indicia,
361 said storage medium being selectively coupled to a reading
362 device, said reading device being selectively coupled to
363 processing circuitry within a computer system, said reading
364 device being selectively operable to read said machine readable
365 coded indicia and provide program signals representative thereof,
366 said program signals being effective to enable an auction of an
367 item offered for sale, said program signals being selectively
368 operable for:
369
370 enabling a seller of said item to input a predetermined reserve
371 price for said item;
372
373 receiving price bids from bidders for said item during an auction
374 period;

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375
376 determining that none of said price bids is equal to or greater
377 than said predetermined reserve price;
378
379 determining that an extension of said auction period was
380 authorized by said seller of said item if none of said price bids
381 was equal to or greater than said predetermined reserve price;
382 and
383
384 automatically extending said auction period if said extension of
385 said auction period was authorized.
386
387 15. The medium as set forth in claim 14 and further including
388 enabling said seller to input said predetermined reserve price
389 from a user terminal separate from said auction server.
390
391 16. The medium as set forth in claim 15 wherein said
392 interconnection network is an Internet interconnection network.
393
394 17. The medium as set forth in claim 14 wherein said program
395 signals are further effective for:
396
397 enabling said seller to input said predetermined reserve price
398 prior to said auction.
399
400 18. The medium as set forth in claim 17 wherein said
401 predetermined reserve price is input by said seller using a
402 computer device.

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403 19. The medium as set forth in claim 17 wherein said
404 predetermined reserve price is input by said seller using a
405 wireless device.

406

407 20. The medium as set forth in claim 17 wherein at least one of
408 said price bids is input by a bidder using a computer device.

409

410 21. The medium as set forth in claim 17 wherein at least one of
411 said price bids is input by a bidder using a portable device.

412

413 22. The medium as set forth in claim 17 wherein at least one of
414 said price bids is input by a bidder using a wireless device.

415

416 23. The medium as set forth in claim 17 wherein at least one of
417 said price bids is input by a bidder using a wireless phone
418 device.

419

420 24. The medium as set forth in claim 14 wherein said program
421 signals are further effective for:

422

423 enabling said seller to designate a duration for said extension.

424

425 25. The medium as set forth in claim 24 wherein said program
426 signals are further effective for:

427

428 enabling said seller to designate a number of extensions to be
429 automatically executed so long as none of said price bids equaled
430 or exceeded said predetermined reserve price.

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431
432 26. A computer system comprising:
433
434 a system bus;
435
436 a CPU device connected to said system bus;
437
438 a memory device connected to said system bus; and
439
440 connection means arranged to connect said computer system to a
441 network, said computer system being arranged to conduct an
442 auction of an item offered for sale over said network, said
443 computer system further including input means by which said
444 seller is enabled to input a predetermined reserve price for said
445 item, and a predetermined number of extension periods for said
446 auction, said computer system being selectively operable for
447 receiving price bids from bidders for said item during an auction
448 period and upon determining that none of said price bids is equal
449 to or greater than said predetermined reserve price, to
450 automatically extend said auction period for up to said
451 predetermined number of extension periods so long as none of said
452 price bids is equal to or greater than said predetermined reserve
453 price.

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